

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SARAH CHARLES, <sup>1</sup>	§	
	§	No. 668, 2011
Respondent Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
DIVISION OF FAMILY SERVICES ,	§	
and COURT APPOINTED SPECIAL	§	File No. CS11-02260
ADVOCATE	§	Petition No. 11-20706
	§	
Respondents Below-	§	
Appellees.	§	

Submitted: March 28, 2012

Decided: April 25, 2012

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

***ORDER***

This 25<sup>th</sup> day of April 2012, it appears to the Court that:

(1) Respondent-Below/Appellant, Sarah Charles (“Mother”), appeals from a Family Court order denying a guardianship petition filed by Petitioner-Below Shirley Banks, for custody of Mother’s biological, minor child (“Child”). Banks is Child’s great-great-grandmother. Mother contends that the Family Court misinterpreted and misapplied the best interests of the child factors under 13 *Del. C.* § 722. In particular, Mother contends that the Family Court should not have

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated December 19, 2011. Supr. Ct. R. 7(d).

considered the wishes of Respondents-Below/Appellees the Division of Family Services (“DFS”) and the Court Appointed Special Advocate (“CASA”) in the best interests of the child analysis. We find no merit to Mother’s appeal and affirm.

(2) Prior to these proceedings, Child resided with Mother, maternal great-aunt Crystal Cannon, and Banks. In March 2010, Mother, Cannon, and Banks adopted a safety plan with DFS providing that Mother would not serve as the primary caregiver for Child because she lacked the capacity to do so on her own. In June 2010, DFS found Mother home alone with Child in violation of the safety plan. The Family Court granted DFS temporary custody of the Child by *ex parte* order in dependency/neglect proceedings against Mother. While in DFS custody, Child was placed with a pre-adoptive foster family.

(3) After periodic review hearings, the Family Court held a permanency hearing and determined that the permanency goal would change from reunification to termination of Mother’s parental rights for purposes of adoption. Banks filed a petition for guardianship, which CASA and DFS opposed. After a hearing on the merits, the Family Court denied Banks’ guardianship petition. This appeal followed. DFS moved to dismiss the appeal on grounds that Mother lacked standing to appeal. This Court denied the motion without prejudice to DFS’s right to raise the standing issue in its answering brief.<sup>2</sup> DFS did not re-raise the issue.

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<sup>2</sup> *Charles v. DFS & CASA*, No. 668, 2011 (Del. Jan. 23, 2012).

(4) When reviewing a Family Court order denying a petition for guardianship, our standard and scope of review involves a review of the facts and law.<sup>3</sup> To the extent that the issues on appeal implicate rulings of law, we conduct a *de novo* review.<sup>4</sup> If the Family Court has correctly applied the law, our review is limited to abuse of discretion.<sup>5</sup> We will not disturb inferences and deductions that are supported by the record.<sup>6</sup>

(5) Title 13, section 2330(a) of the Delaware Code sets forth the standard for granting an order for guardianship.<sup>7</sup> Pursuant to subsection (2), the Family Court must find by a preponderance of the evidence that: “(a) The child is dependent and/or neglected; and (b) It is in the best interests of the child for the guardianship to be granted.”<sup>8</sup> Under the best interests of the child analysis set forth in section 722, the Family Court is required to consider all relevant factors, including:

(1) The wishes of the child’s parent or parents as to his or her custody and residential arrangements;

(2) The wishes of the child as to his or her custodian or custodians and residential arrangements;

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<sup>3</sup> *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

<sup>4</sup> *In re Heller*, 669 A.2d 25, 29 (Del. 1995).

<sup>5</sup> *Jones v. Lang*, 591 A.2d 185, 186–87 (Del. 1991).

<sup>6</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

<sup>7</sup> *Green v. Div. of Family Servs.*, 992 A.2d 1237, 2010 WL 1114928, at \*3 (Del. Mar. 25, 2010) (TABLE) (quoting *Shepherd v. Clemens*, 752 A.2d 533, 536–37 (Del. 2000)).

<sup>8</sup> 13 Del. C. § 2330(a)(2).

- (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
- (4) The child's adjustment to his or her home, school and community;
- (5) The mental and physical health of all individuals involved;
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under [section] 701 of this title;
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
- (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.<sup>9</sup>

(6) Here, the Family Court correctly interpreted the factors under section 722 and did not abuse its discretion in applying them to the facts at issue. The Family Court considered Mother's wishes pursuant to the first factor. Although the Family Court also noted the beliefs of DFS and CASA, it did so in consideration of the Child's best interests and concern about the Child's safety if Banks was granted guardianship. Because the Child was a toddler, the Family Court considered the opinions of the adults involved, including DFS and CASA representatives, to determine the Child's wishes and overall best interests under

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<sup>9</sup> 13 *Del. C.* § 722(a).

factor two.<sup>10</sup> The Family Court did not, however, rely solely on the opinions of DFS and CASA or disregard the wishes of others' involved. CASA is appointed to represent the best interests of the child.<sup>11</sup> It was proper for the Family Court to rely in part on CASA's testimony regarding the Child's existing bond with her foster family and what CASA believed to be in the Child's best interests.

(7) Based in part on DFS and CASA testimony, the Family Court found the Child had become bonded with her foster parents and integrated into the foster home. The Family Court also found, based on Banks' testimony, that Cannon would become the primary custodian if Banks was awarded guardianship. The Family Court noted the lack of testimony that Cannon was devoted to this task and a concern that the circumstances leading up to the dependency/neglect proceedings would be repeated.

(8) In its analysis, the Family Court found that two factors—the Mother's wishes and the ability of the Child to bond with her birth family—weighed in favor of granting Banks' petition. But, the Family Court also found that five factors supported continued care in the foster home. The Family Court properly

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<sup>10</sup> See, e.g., *Odgen v. Collins*, 2010 WL 4816059, at \*3 (Del. Nov. 29, 2010) (recognizing testimony from CASA that given child's close bond with foster family, CASA did not believe it was in child's best interests to grant guardianship petition); *In re Lewis B.C.*, 1999 WL 692071, at \*30, n.73 (Del. Fam. June 11, 1999) (noting that, where child "is too young to meaningfully express his own wishes and desires," "there is no conflict between the child's wishes and desires and the CASA's view as to the child's best interests")

<sup>11</sup> See, e.g., *In re Lewis B.C.*, 1999 WL 692071, at \*30 (explaining that CASA is "qualified and expected to testify" about child's best interests).

considered each factor and ultimately concluded that it was in the Child's best interests for the guardianship request to be denied. Mother has not shown that the Family Court incorrectly applied the law in assessing the Child's best interests or made factual findings that were clearly erroneous.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice